

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito

Criminal Bail Application No.1404 of 2022

Applicant : Muhammad Khalid S/o Muhammad Mukhtar through Mr. Waqar Alam Khan, Advocate

Complainant : Ms. Zoya Raees Baig D/o Raees Baig Present in person.

Respondent : The State Through Ms. Seema Zaidi, Deputy Prosecutor General, Sindh alongwith SIP Muhammad Qasim of PS New Karachi

Date of hearing : 06.01.2023

Date of order : 06.01.2023

ORDER

AMJAD ALI SAHITO, J -- Through this Bail Application, applicant/accused seeks post-arrest bail in FIR No.271/2022 registered under Sections 376/511 PPC at PS New Karachi, after his bail plea has been declined by Addl. Sessions Judge-II, Karachi Central vide order dated 07.07.2022.

2. The details and particulars of the FIR are already available in bail application and the FIR, as such, need not to reproduce the same hereunder.

3. Learned counsel for the applicant/accused has mainly contended that the applicant/accused is innocent and has falsely been implicated in this case; that independent witnesses have not supported the version of the complainant; that no medical certificate is available on record to connect the present applicant/accused with the commission of offence; that two PWs have been examined and the trial is at verge of conclusion, as such, the applicant/accused may be enlarged on bail.

4. On the other hand, learned Addl. P.G. duly assisted by the complainant opposes for grant of post-arrest bail to the applicant/accused.

5. I have heard the learned counsel for the parties and have gone through the material available on record.

6. The case of the prosecution is that the complainant was informed by her sister that her daughter namely Umm-e-Habbiba went to the house of her aunt where her uncle/accused Khalid tried to commit zina with her, as such, she rushed there where victim Umm-e-Habbiba narrated the whole story and confirmed the contention of her sister. Further, the charge has been framed and two PWs have been examined. It is settled principle of law that when the witnesses have been examined and the trial is at final stage of announcement of judgment then the Courts should not grant or cancel the bail. The reliance is placed in the case of **Rehmatullah v. The State (2011 SCMR 1332)**; wherein the Hon'ble Supreme Court of Pakistan has held that:

***“3. Heard. The petitioner was granted bail on 21-11-2008, which was cancelled by the learned High Court on 19-3-2009, when according to the order itself the trial was at the verge of conclusion. Learned Additional Prosecutor-General stated that now only one or two witnesses are yet to be recorded. The courts should not grant or cancel bail when the trial is in progress and proper course for the courts in such a situation would be to direct the learned trial Court to conclude the trial of the case within a specified period. Reference may be made to Haji Mian Abdul Rafique v. Riaz ud Din and another (2008 SCMR 1206). We find that the impugned order was passed in violation of the law, therefore, we cannot subscribe to it. In view whereof, we are persuaded to allow this petition and direct the learned trial Court to conclude the trial of the case expeditiously.*”**

4. For the foregoing reasons, present petition is converted into appeal, allowed and bail granting order dated 6-4-2009, passed by this court, is confirmed. However, learned trial Court is directed to conclude the trial of the case within a period of two months from the date of receipt of copy of this order.”

7. In view of the above and taking guideline from the cited case, learned counsel for the applicant has failed to make out a case for grant of post-arrest bail. Accordingly, the instant Bail Application

is dismissed. However, the learned trial Court is directed to expedite the matter and conclude the same preferably within forty five (45) days from the date of receipt of this order.

8. Needless to mention here that the observations made hereinabove are tentative in nature and would not influence the learned trial Court while deciding the case of the applicant on merits.

JUDGE

Kamran/PA